

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NEEMAH PAM FISHER, et al., :
Plaintiffs, :
: 18-cv-07463-DLI-RML
v. : ("Fisher")
: CRÉDIT LYONNAIS, S.A. and LCL, S.A., as :
successor in interest to CRÉDIT LYONNAIS, S.A.,:
Defendants. :
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STIPULATION AND [PROPOSED] ORDER

WHEREAS, on December 31, 2018, Neemah Pam Fisher, Nathan Pam, Raziel Pam, Ephriam Bluth, individually and as the Legal Representative of Shoshana Bluth, Tsipora Batya Bluth Reicher, Isaac Menachem Bluth, Yigal Amichai Bluth, Aryeh Yehuda Bluth, Chanina Samuel Bluth, Abraham Aharon Bluth and Joseph Shimshon Bluth (collectively, the "*Fisher Plaintiffs*"), filed this action and purported to assert claims in their Complaint (the "*Fisher Complaint*") against Crédit Lyonnais, S.A. ("CL") and LCL, S.A., allegedly as successor in interest to Crédit Lyonnais, S.A. ("Defendants");

WHEREAS, the claims asserted in the *Fisher* Complaint substantially overlap with those asserted in *Strauss. v. Crédit Lyonnais, S.A.*, 06-cv-702-DLI-RML and *Wolf. v. Crédit Lyonnais, S.A.*, 07-cv-914-DLI-RML (together, the "Underlying Actions"), in which this Court granted CL's motion for summary judgment on March 31, 2019, *Strauss* ECF No. 480/ *Wolf* ECF No. 362 (the "*Strauss/ Wolf Summary Judgment Decision*");

WHEREAS, Plaintiffs in the Underlying Actions filed a notice of appeal of the *Strauss/ Wolf Summary Judgment Decision* on April 2, 2019, *Strauss* ECF No. 482/ *Wolf* ECF No. 364, and CL filed a notice of cross appeal of a prior decision of the Court denying CL's motion to

dismiss for lack of personal jurisdiction (the “*Strauss/ Wolf* Personal Jurisdiction Decision”) on April 26, 2019, *Strauss* ECF No. 483/ *Wolf* ECF No. 365;

WHEREAS, on March 31, 2020, this Court directed the parties to “file a stipulation of dismissal or take other action to move this case forward on or before May 1, 2020;”

WHEREAS, the parties have conferred and agree that, upon the Court’s authorization, the *Fisher* Complaint shall be dismissed, either (i) with prejudice in the event of an affirmance of the *Strauss/ Wolf* Summary Judgment Decision and/or the grant of CL’s cross appeal of the *Strauss/ Wolf* Personal Jurisdiction Decision or (ii) without prejudice in the event of reversal of the *Strauss/ Wolf* Summary Judgment Decision or remand for further proceedings.

IT IS HEREBY STIPULATED BY AND BETWEEN the undersigned counsel as follows:

1. Upon execution of this stipulation, the *Fisher* Plaintiffs will promptly dismiss the *Fisher* Complaint without prejudice by filing a notice of dismissal pursuant to Rule 41(a)(1)(A)(i), with each party responsible for its own costs.

2. In the event of a final affirmance of the *Strauss/ Wolf* Summary Judgment Decision and/or the grant of CL’s cross-appeal of the *Strauss/ Wolf* Personal Jurisdiction Decision and, in either case, the exhaustion of all remedies and further appeals and a final judgment in favor of CL in the Underlying Actions (a “Final Judgment”), such Final Judgment shall be deemed to apply to the *Fisher* Plaintiffs’ claims to the same extent that it does to the claims in the Underlying Actions, and the *Fisher* Plaintiffs shall be barred to the same extent as the *Strauss* plaintiffs from filing a new Complaint or any other action in any court alleging such claims against Defendants.

3. In the event of reversal of the *Strauss/ Wolf* Summary Judgment Decision or remand for further proceedings, CL will consent to a further amendment of the operative Complaint in one of the Underlying Actions to add the *Fisher* Plaintiffs and thereby consolidate the actions so they can proceed together for trial and any subsequent proceedings, provided that

(a) in no event will any of the *Fisher* Plaintiffs be called to testify in the trial on liability and, (b) except upon order of the Court for good cause shown, none of the *Fisher* Plaintiffs will offer documentary evidence in the trial on liability that has not already been provided to Defendant and described in the Joint Pretrial Order filed on March 3, 2018, *Strauss* ECF No. 458/ *Wolf* ECF No. 338, and provided further that Plaintiffs file their motion to amend no later than 30 days after the mandate is returned to the district court. If the Court denies such motion to amend the Complaint to add the *Fisher* Plaintiffs, the *Fisher* Plaintiffs may file a new action within thirty days of such denial. Defendants expressly waive their rights and defenses to assert in the future, based on this stipulation, that the *Fisher* Plaintiffs' claims are untimely or to in any other manner assert a statute of limitations or laches defense against the *Fisher* Plaintiffs, provided that the *Fisher* Plaintiffs assert those claims on the timetable described above and no later than May 15, 2029, and provided further that any defenses Defendants had or could have raised at the time this suit was filed are not affected by this sentence. Defendants otherwise reserve all rights and defenses they have with respect to the *Fisher* Plaintiffs' claims, and nothing herein shall impair or otherwise affect such rights and defenses.

Dated: New York, New York
May 1, 2020

Respectfully submitted,

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IT IS SO ORDERED, this ____ day of _____, 2020:

Hon. Dora L. Irizarry, U.S.D.C.